No. 2713

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

HOONAH PACKING COMPANY
(a corporation),
Plaintiff in Error,

vs.

TERRITORY OF ALASKA,
Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

Z. R. CHENEY,
Attorney for Plaintiff in Error.

Filed this.....day of March, 1916.

FRANK D. MONCKTON, Clerk.

By.....Deputy Clerk.

PERNAU PUBLISHING COMPANY

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Statement of Facts.

The facts, as shown by the pleadings and stipulation, are, briefly stated, substantially as follows:

The Hoonah Packing Company, plaintiff in error, during the fishing season of 1915, owned and operated eleven fish-traps in the waters of Southeastern Alaska. These traps were operated in connection with the operation of the Company's salmon cannery located at Hoonah, Alaska. None of the fish caught in the traps were sold by the Company until the fish had been manufactured into a product known as canned salmon. The Company had a license from the Federal Government to operate its cannery, and had complied with all the laws,

rules and regulations passed or promulgated by the Federal Government relating to salmon fisheries in Alaska.

On April 29, 1915, the Alaska Territorial Legislature passed an Act imposing a tax of $100 annually on all fish-traps in Alaska.

No assessment was ever made by the Territory upon the fish-traps taxed under this Act.

The Territory has passed no laws providing for the inspection or regulation of fish-traps in the Territory.

Some of the Company's traps are worth $10,000, and some are worth not to exceed $1,000.

The Act providing for the tax in question was passed by the Legislature and approved by the Governor in the early morning of April 30, 1915.

The statutes involved in this appeal are the following:

> Act of Congress, March 3, 1899, as amended by Act of June 6, 1900, known as the "Occupation Tax Law";
>
> Act of June 26, 1906, relating to fish and fisheries;
>
> Act of August 24, 1912, known as the "Organic Act" of the Territory;
>
> Act of Legislature of Alaska, April 29, 1915, imposing a tax on fish traps.

All the foregoing Acts are set out in full in the printed record in the case entitled, "*Alaska Salmon Company v. The Territory of Alaska,* No. 2720" now pending in this Court. We deem it unneces-

sary to set out the entire statutes in this brief, but do desire to call the Court's especial attention to certain portions of these Acts, namely:

Act March 3, 1899, as amended by Act June 6, 1900 (Record, Cause No. 2720, pp. 54-55):

> "That any person or persons, corporation or company prosecuting or attempting to prosecute any of the following lines of business within the District of Alaska shall first apply for and obtain license so to do from a district court or a subdivision thereof in said District, and pay for said license for the respective lines of business and trade as follows, to wit: * * *
>
> 'Fisheries: Salmon canneries, four cents per case; salmon salteries, ten cents per barrel; fish oil works, ten cents per barrel; fertilizer works, twenty cents per ton. * * *'"

Act June 26, 1906 (Record, Cause No. 2720, pp. 46-47).

> "An Act for the Protection and Regulation of the Fisheries of Alaska.
>
> Be it enacted, etc., That every person, company, or corporation carrying on the business of canning, curing, or preserving fish or manufacturing fish products within the territory known as Alaska, ceded to the United States by Russia by the treaty of March thirtieth, eighteen hundred and sixty-seven, or in any of the waters of Alaska over which the United States has jurisdiction, shall, *in lieu of all other license fees and taxes therefor and thereon, pay license taxes on their said business and output as follows*: *Canned salmon, four cents per case; pickled salmon, ten cents per barrel; salt salmon in bulk, five cents per one hundred pounds; fish oil, ten cents per barrel; fertilizer, twenty cents per ton.* The payment and collec-

tion of such license taxes shall be under and in accordance with the provisions of the Act of March third, eighteen hundred and ninety-nine, entitled 'An Act to define and punish crimes in the district of Alaska, and to provide a code of criminal procedure for the district', and amendments thereto. * * *'' (Italics ours.)

Act August 24, 1912 (Record, Cause No. 2720, pp. 23-24, 27-28, and 30):

''* * * Sec. 3. Constitution and laws of United States extended.—That the Constitution of the United States, and all the laws thereof which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States; that all the laws of the United States heretofore passed establishing the executive and judicial departments in Alaska shall continue in full force and effect until amended or repealed by Act of Congress; that except as herein provided all laws now in force in Alaska shall continue in full force and effect until altered, amended, or repealed by Congress or by the Legislature; Provided, That the authority herein granted to the legislature to alter, amend, modify, and repeal laws in force in Alaska shall not extend to the customs, internal-revenue, postal, or other general laws of the United States or to the game, fish, and fur-seal laws and laws relating to fur-bearing animals of the United States applicable to Alaska, or to the laws of the United States providing for taxes on business and trade, or to the Act entitled 'An Act to provide for the construction and maintenance of roads, the establishment and maintenance of schools, and the care and support of insane persons in the District of Alaska, and for other purposes', approved January twenty-

seventh, nineteen hundred and five, and the several Acts amendatory thereof. Provided further, that this provision shall not operate to prevent the legislature from imposing other and additional taxes and licenses. * * *

Sec. 9. Legislative power—Limitations.—The legislative power of the Territory shall extend to all rightful subjects of legislation but not inconsistent with the Constitution and laws of the United States. * * * All taxes shall be uniform upon the same class of subjects and shall be levied and collected under general laws, and the assessments shall be according to the actual value thereof. No tax shall be levied for Territorial purposes in excess of one per centum upon the assessed valuation of property therein in any one year. * * *''

Act April 29, 1915 (Record, Cause No. 2720, pp. 38-39):

"An Act to establish a system of taxation, create revenue, and provide for collection thereof, for the Territory of Alaska, and for other purposes; and to amend an Act entitled 'An Act to establish a system of taxation, create revenue, and provide for collection thereof for the Territory of Alaska, and for other purposes', approved May 1, 1913, and declaring an emergency.

Be it Enacted by the Legislature of the Territory of Alaska:

Section 1. That any person, firm or corporation prosecuting or attempting to prosecute any of the following lines of business in the Territory of Alaska shall apply for and obtain a license and pay for said license for the respective lines of business as follows: * * *

6th. Fisheries: Salmon canneries, four cents per case on King and Reds or Sockeye;

two cents per case on Medium Reds; one cent per case on all others.

7th. Salteries: Two and one-half cents per one hundred pounds on all fish salted or mild cured, except herring.

8th. *Fish Traps*: *Fixed or floating, one hundred dollars per annum, so called dummy traps included.* * * *" (Italics ours.)

Upon the trial in the District Court, the Territory was given judgment for the amount of the taxes, amounting with interest to $1136.00.

Specifications of Error.

Plaintiff in error has assigned as error the following (Record, pp. 50-51):

"I.

The Court erred in overruling the defendant's demurrer to the plaintiff's complaint, and in entering its order therein on August 11, 1915.

II.

The Court erred in holding, as a matter of law, that the plaintiff was entitled to judgment against the defendant for the sum of $1,136, for the following reasons, to wit:

(a) Because the facts stipulated and agreed to between the plaintiff and defendant show that the defendant has not come within the provisions of chapter 76 of the Session Laws of 1915, the same being the act of April 29, 1915.

(b) Because the last-mentioned act, and especially those provisions relied upon as the basis of this action is and are void and invalid:

First. Because that portion of the act of April 29, 1915, imposing a tax of $100 on each fish-trap in Alaska is in violation of the provisions contained in sections 3 and 9 of the act of Congress, approved April 24, 1912, entitled. 'An act to create a legislative assembly in the Territory of Alaska, to confer legislative power thereon, and for other purposes', which act is known as the Organic Act of Alaska.

Second. The legislature is limited in its grant of power from Congress to provide for the assessment, levying and collection of taxes in Alaska, and power to act beyond the grant is not an attribute of sovereignty in a Territory.

Third. All taxation of real and personal property in Alaska, under laws passed by the legislature for the purpose of raising revenue for territorial purposes, whether under the name of taxes, excises, licenses, or any other name, must be imposed according to the actual value of the property taxed.

Fourth. Because the act of April 29, 1915, is a local or special act.

Fifth. Because the act in question was passed by the legislative assembly after the expiration of sixty days from the convening of the session in 1915.

III.

The Court erred in the rendition of its judgment filed December 2, 1915, for the same reasons set forth in the above and foregoing assignment of error Number II. * * *"

Argument.

The first question to be disposed of arises under Subdivision (a), Assignment of Error No. II, Rec-

ord p. 50. It is this: Conceding, for the sake of this argument, that the Legislature had the power to pass the Act imposing the tax of $100 on fish traps, does the plaintiff in error, under the admitted facts and pleadings, come within the terms of the law? It is alleged in the amended answer (Record, p. 27) and admitted in the reply (Record, p. 34) that each and all of the eleven traps owned and operated by the Company are part and parcel of the cannery property, and that they are appliances used by the Company in connection with its operation of said cannery; that the fish caught in said traps are not sold by the Company, but are all canned in the Company's said cannery; in other words, it is admitted that the fish trap is only one of the many appliances used by the Company in taking the fish needed for its cannery. Fish are caught in traps, seines, gill-nets, and by means of trolling lines from dories. The Legislature has named two of the appliances used by the Company in its fishing business and called the appliances occupations.

The farmer plows his land with a plow, rakes his hay with a rake, and harvests his grain with a harvester. Would the Legislature be justified in passing an Act similar to the Act of April 29, 1915, in which these words are contained:

Plows	$ 50.00	per annum
Rakes	50.00	" "
Harvesters	100.00	" " ?

The law here in question simply states:

Fish-traps ..... $100.00 per annum
Gill-nets ..... 1.00 " hundred fathoms.

In each case the appliances by which the citizen gathers his crop are named and taxed as an occupation. We contend that under the admitted facts contained in the record in this case, the plaintiff in error does not come within the spirit of the Act imposing the tax in question.

The next question is this: Is the Act of April 29, 1915, void and invalid for any of the reasons set forth in the assignment of errors herein?

The Act of the Legislature is void, for the reason that it constitutes an amendment of a law of the United States relating to fish and fisheries of Alaska.

The Organic Act provides that the authority granted to the Legislature to alter, amend, modify and repeal laws in force in Alaska shall not extend to the fish laws of the United States.

The Act of June 26, 1906, is a fish law of the United States and was in force in Alaska on April 29, 1915.

The Act of June 26, 1906, provides for certain license taxes on the fish business and further that those license taxes shall be in lieu of all other license fees and taxes on the business and output of the canneries.

The tax on the fish-traps operated by the plaintiff in error is a tax on the business of the cannery.

The Agreed Statement of Facts shows that the plaintiff in error has paid all license taxes due the United States for the year 1914.

Section 3 of the Organic Act (Record Cause No. 2720, p. 23) provides as follows:

> "* * * that except as herein provided all laws now in force in Alaska shall continue in full force and effect until altered, amended, or repealed by Congress or by the Legislature; Provided, That the authority herein granted to the Legislature to alter, amend, modify, and repeal laws in force in Alaska shall not extend to the customs, internal-revenue, postal, or other general laws of the United States or to the game, fish, and fur-seal laws and laws relating to fur-bearing animals of the United States applicable to Alaska, or to the laws of the United States providing for taxes on business and trade. * * * Provided further, that this provision shall not operate to prevent the legislature from imposing other and additional taxes and licenses."

Under the above provision, it will be noted that the fish laws and the laws providing for taxes on business and trade are expressly mentioned as laws which the Legislature of Alaska had not power to alter, amend, modify or repeal. These words "fish" and "laws providing for taxes on business and trades" do not appear in the proviso which permits the imposition of other and additional taxes and licenses. The natural and logical interpretation is that Congress intended to confer power upon the Legislature to alter, amend, modify and repeal all existing laws except on those subjects

expressly mentioned as reserved to the United States Government.

> "* * * Words expressive of a particular intent incompatible with other words expressive of a general intent will be construed to make an exception, so that all parts of the act may have effect. * * * Where there is an act or provision which is general, and applicable actually or potentially to a multitude of subjects, and there is also another act or provision which is particular and applicable to one of these subjects, and inconsistent with the general act, they are not necessarily so inconsistent that both cannot stand, though contained in the same act, or though the general law were an independent enactment. The general act would operate according to its terms on all the subjects embraced therein, except the particular one which is the subject of the special act."
>
> *Lewis' Sutherland Statutory Construction,* Second Edition, Volume II, page 660;
>
> *Zickler v. Union Bank & T. Co.,* 104 Tenn. 277.

Unless the Act of April 29, 1915, repealed the Act of June 26, 1906, the first-mentioned Act is void.

> *Pacific Gas & Electric Co. v. Roberts,* 168 Cal. 420.

What is the nature of this imposition of $100 on fish-traps? Is it an excise, a property tax or a license? An excise is defined as an inland impost levied upon articles for manufacture or sale and also upon licenses to pursue certain trades or to deal in certain commodities. Taxes on employ-

ments are excises. *Cooley on Taxation, Third Edition,* Volume I, p. 31, where it is said:

> "*Taxes on Employments.* A tax on the privilege of carrying on a business or employment will commonly be imposed in the form of an excise tax on the license to pursue the employment; and this may be a specific sum, or a sum whose amount is regulated by the business done or income or profits earned. Sometimes small license fees are required, mainly for the expense of regulation; but in other cases substantial taxes are demanded, because the persons upon whom they are laid would otherwise escape taxation in the main, if not entirely. Instances of hawkers, peddlers, auctioneers, etc., will readily occur to the mind. The form of a license, though not a necessary, is a convenient, form for such a tax to assume, because it then becomes a condition to entering upon the business or employment and is collected without difculty. But it is equally competent to impose and collect the tax by the usual methods."

That this tax is an excise has been held in *Binns v. United States,* 194 U. S. 486, where this language is used:

> "We shall assume that the purpose of the license fees required by section 460 is the collection of revenue, *and that the license fees are excises within the constitutional sense of the terms.*" (Italics ours.)

If the tax in question is an excise, we contend that the law imposing it is void, for the reason that the Territory does not possess plenary power to lay excises; that this power is possessed only by the Congress of the United States. See *Talbott v. Silver*

Bow County, 139 U. S. 438. Congress did not delegate this power to the Territory of Alaska. The Honorable Judge Jennings, before whom this case was tried, holds that the power of Congress to lay excises was delegated to the Legislature by virtue of the clause "provided that this provision shall not operate to prevent the Legislature from imposing other and additional taxes and licenses" (Record p. 18).

We contend that Congress intended, by this provision, simply to give the Legislature power to levy taxes on property (such taxes to be laid according to ascertained value and not to exceed one per cent. on the value, according to provisions of Section 9 of the Organic Act) and also to license certain callings which require police regulation by the Territory, having in mind the limitations upon all such police power—that is to say, that such licenses should be governed by the rules as to reasonableness of amount, and that they should not exceed the cost of issuance and necessary expenses for the inspection and regulation of the business licensed.

That this Act is purely a revenue measure is clearly shown by its title: "An Act to establish a system of taxation, create revenue and provide for collection thereof."

Being a revenue measure it should be construed strictly.

Cooley on Taxation, Vol. 1, p. 456, 3 Ed.;
Rice v. U. S., 53 Fed. 910.

A license is a privilege to do an act or carry on a pursuit, the performance or transaction of which is forbidden without such special permission. A license tax is a tax imposed upon the privileged action or pursiut.

Cooley on Taxation, Third Ed., p. 1137;
Burch v. Savannah, 42 Ga. 596;
Reed v. Beall, 42 Miss. 472;
Cache County v. Jensen, 61 Pac. 303;
Merced v. Helm, 102 Cal. 159;
Kiowa v. Dunn, 40 Pac. 357.

Congress has power to lay excises upon certain commodities and callings, solely for the purpose of revenue, this power Congress could delegate to the Alaskan Legislature. But we contend that it is not reasonable to think that Congress ever intended to delegate to the Territory such arbitrary power to burden the citizens of Alaska with such obnoxious and iniquitous laws. Dr. Johnson, speaking of an excise tax, said it was "a hateful tax levied upon commodities"; and Blackstone, after mentioning certain articles which had been added to the list of those excised, said "a list which no friend to his country would wish to see further increased". Usually articles subjected to excises are liquors and tobacco and appropriately selected therefor on the ground that they are not a part of the essential food supply of the nation but are among its comforts and luxuries. Callings or occupations excised are usually similar in character, such as the liquor business. Such

laws have never been extended to cover wheat, cotton or corn.

The Territory of Alaska is here attempting to lay an excise on a legitimate, useful and beneficial business, one of the great food products of the country —a product which is beneficial to the health and adds to the wealth and happiness of a nation. A salmon swimming in the waters of the sea has no value. If he lives his allotted time and dies in his natural element, he has contributed nothing to the benefit of mankind. The moment he is taken from the sea, he becomes a thing of value—a useful article for food consumption.

A law which not only taxes the necessary food supply of a nation by taxing the output of the canneries, but goes to the extent of laying heavy excises upon the appliances and instrumentalities used in obtaining that food supply, is an obnoxious and iniquitous thing.

In *Ex parte Pfirrmann,* 134 Cal., page 148, the Court uses this language:

> "* * * Further than that, it may be said that the trend of our state policy at the present time looks toward a cessation of legislation which has for its purpose, the raising of revenue by the collection of direct taxes, under the guise of a license, as a condition precedent to the conduct of business. Such legislation seems to be considered an impolitic burden resting upon legitimate business, and a fine assessed upon commercial enterprise."

Counsel for defendant in error may say that fish and fisheries of Alaska belong to the citizens

of Alaska; that the citizens, therefore, have the right to deal with such things as they see fit. Nothing could be farther from the truth. The fish in the bays, inlets and tidal waters of the Territory belong to the nation at large. Even the tide lands, whereon are located the traps, and the seashore for a distance of sixty feet above the tide, whereon are located the canneries, belong exclusively to the United States, being expressly reserved to its use by Acts of Congress.

If this is not an excise but a property tax, it falls within the limitations mentioned in Section 9 of the Organic Act. Being subject to such limitations, it is void because, *first,* it is not levied according to value of the property; *second,* no assessment on the property was ever made; and, *third,* it exceeds one per cent. of the actual value of the property. (Stipulation, Paragraphs V and VII, Record, pp. 36 and 37.) This branch of the question requires no further argument or citation of authorities.

If the tax in question be considered as a license imposed under the police powers of the Territory, for the purpose of regulation, it is void because it is excessive. It is admitted in the stipulation (Paragraph VI, p. 36) that the Territory has made no attempt to regulate the business. Therefore, there can be no expense for regulation or inspection. The only expense connected with the whole matter, so far as the Territory of Alaska is concerned, is the cost of printing and issuing the paper denomi-

nated a license. There are about 300 fish-traps operated in the Territory of Alaska. That $30,000 is an excessive amount for the mere clerical work of issuing 300 licenses is obvious. The collection of this license by the Territory is for the purpose of revenue, and not for the purpose of police regulation. This is shown by the excessive amount of the tax.

The license fees which are sometimes required to be paid by those who follow particular employments are, when imposed for the purpose of revenue, taxes. *Cooley's Constitutional Limitations,* p. 611, Sixth Edition. The Act in question simply provides that persons or companies engaged in fishing in Alaska shall pay $100 per year on each trap. The Territory is not interested as to how the business shall be conducted, how the fish-traps shall be operated, whether they shall fish on Sunday or at any other time, or that the traps shall be placed in a salmon stream or in the ocean. The Legislators knew, when they passed the bill, that the entire regulation of the fish business in Alaska was exclusively in the hands of the Federal Government; that the Federal Government had imposed stringent rules and regulations as to the conduct of the business; that the Government was spending thousands of dollars annually in enforcing these regulations by means of patrol boats, fish agents, fish inspectors, fish hatcheries, etc. In determining whether or not a license is imposed in good faith, and as a police regulation, or whether it is intended

merely as a means for obtaining money, the Courts will take into consideration the question of whether or not the sovereign power imposing the license has made any attempt at regulation of the business licensed. In the case of *City of New York v. Second Avenue R. R. Co.,* 32 N. Y. 261, this language is used.

> "The plaintiffs must show, however, that the subject of the ordinance which they are seeking to enforce, is one over which they have authority to legislate, and that it is a regulation of police and internal government, and not the mere imposition of a duty or sum of money for the purposes of revenue. * * *
>
> Section 106 declares that 'each and every passenger railroad car, running in the city of New York, below 125th street, shall pay into the city treasury the sum of $50, annually, for a license, a certificate of such payment to be procured from the mayor, except the small one-horse passenger cars, which shall each pay the sum of $25 annually, for such license as aforesaid'. Section 2 declares that 'each certificate of payment of license shall be affixed to some conspicuous place in the car, that it may be inspected by the proper officer'. And section 3 prescribes the penalty for running a car without the proper certificate. That is all.
>
> There is nothing for the railroad corporations to do, but to pay to the mayor the sum of $50, annually, for each car, and receive in return a license or certificate that the money has been paid. The ordinance imposes no duties to be observed by the company or its servants, but the single act of paying the money. It prescribes no regulations in regard to the size, dimensions, comfort and cleanliness of the cars, the speed at which the same

shall be run, the manner of receiving and discharging passengers, their numbers and names, or the stations at which they shall stop. Regulations of police are regulations of internal or domestic government, forbidding some things, and enjoining the performance of others, for the security and protection, and to promote the happiness of the governed. The only act enjoined by the ordinance in question is the payment of the $50, and the only act which it forbids and prohibits is the running of the cars without the payment of the money. If the legislature should by law require every head of a family throughout the state to pay to the collector the sum of $20, and take his receipt therefor, it would be a fiscal measure, an expedient to replenish the treasury, not a regulation of police, prescribing a rule of action and conduct. So with this ordinance, call what it requires by the name of license or certificate of payment, or anything else, its primary, and indeed, only purpose is, to take from the company, under coercion of the penalty which it imposes, the sum of $50, annually, for each car run upon the road, for the benefit of the city.

The certificate which the company is to receive, upon payment being made, is called a license, in the ordinance. A license to do what? The ordinance does not say—and, indeed, it could not, with truth, say—a license or permission to employ the car in the transportation of passengers upon the road—for the absolute right to do that which had been not only required, but positively enjoined upon the company, by the stipulations of the grant of the 15th of December, 1852. It is in vain, therefore, to speak of it, or to treat it, as a license, or a regulation of police. It is the imposition of an annual tax upon the company, in derogation of its rights of property, and on

that account, is unlawful and void. The judgment of the supreme court should be affirmed, with costs."

Sunset Tel. & Tel. Co. v. City of Medford, 115 Fed. 202;

The Laundry License Case, 22 Fed. 701;

Flannigan v. Sierra County, 196 U. S. 553; Id. 122 Fed. 24.

With reference to the decision in the *Binns case,* 194 U. S. 486 it must be remembered that prior to March 3, 1899, not one dollar of taxes was paid by the citizens of the Territory of Alaska. There was no Territorial Legislature prior to that date, and Congress had not seen fit to pass any revenue measure for the Territory.

Justice Brewer, in rendering the opinion of the Court, mentioned the conditions that existed in the Territory (p. 495). Congress chose this method of raising revenue by an occupation tax as the most feasible way of producing revenue from the Territory. After the passage of the Act of March 3, 1899, the amendment of June 6, 1900, and the Act of June 26, 1906, various kinds of property of great value, excepting only the fisheries, still remained without taxation. Such was the situation August 24, 1912, when Congress passed the Organic Act. The men who framed this Act knew that much of the property in the Territory, such as horses, cattle and real property, was not reached by the occupation tax law. They desired to give the Legislature authority to tax this property. The power

was given in Section 9 of the Organic Act. The Legislature did not make use of its powers under Section 9, but attempted to usurp the powers of Congress by the passage of an excise law. In 1915 the same reasons did not exist for imposing excise taxes as had existed in 1899 when Congress passed the occupation tax law. Congress was then legislating for one of its possessions located thousands of miles from the seat of Government—a possession with no powers of self-government; no Legislature; sparsely populated; known only to a few hardy miners. The conditions existing in the Territory furnished the excuse for Congress to pass the first occupation tax law—a tax law which operates unjustly in many instances; for example, transfer companies are taxed fifty dollars per annum, regardless of the number of teams used or amount of business done. The poor man with his one-horse express pays the same as the large companies with fifty teams. This inequality applies to many other kinds of business taxed under that law.

In 1912, when Congress created the Legislative Assembly, the Legislature was given the power to tax property under the express limitations contained in Section 9 of the Organic Act, which provides

> "all taxes shall be uniform upon the same class of subjects and shall be levied and collected under general laws, and the assessments shall be according to the actual value thereof. No tax shall be levied for Territorial purposes in excess of one per centum upon the assessed valuation of property therein in any one year."

In view of the great development in the Territory during the sixteen years since the passage of the Act of 1899, which development has created a permanent population with millions of dollars invested in real and personal property, all of which could be reached by means of ordinary property taxation, and in view of the language contained in Section 9 above, it seems reasonable to conclude that Congress intended that the Legislative Assembly of Alaska should adopt a system of property taxation instead of continuing the excise system.

If the tax on the fish-traps be held valid as an excise or occupation tax, there will be nothing to prevent the Legislature from passing another tax law at its next session, the tax to be laid under the provisions of Section 9 of the Organic Act.

> "A general tax may be charged upon property once charged with an excise; and the power to tax it as property, subject to constitutional limitations as to the mode of taxing property, is not defeated by the fact that it has already paid an excise."

The above is the language of the syllabus in the case of *Patton v. Brady,* 184 U. S. 609.

In the event that the Legislature passes a property tax law, the cannery companies will then be required to pay four different taxes on their property, namely, a tax of four cents a case to the Federal Government; a tax of four cents a case to the Territory; a tax of one hundred dollars annually

upon each fish-trap; and a tax of one per cent. upon the value of their entire cannery plant, including the traps.

Stating the points briefly, we contend that if the Act in question is valid, plaintiff in error does not come within the spirit of the law. If the tax in question be an excise it is void because the Territory did not possess plenary power to lay an excise; if a property tax, it is void because it is not imposed in accordance with the specific rules laid down in Section 9 of the Organic Act of the Territory of Alaska; if a license tax imposed under the police power of the Territory, it is void because it is excessive in amount.

Respectfully submitted,

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Attorney for Plaintiff in Error.